

§ 405.705

42 CFR Ch. IV (10–1–06 Edition)

reconsidered determinations made by a QIO);

(12) When services are excluded from coverage as custodial care (§411.15(g)) or as not reasonable and necessary (§411.15(k)), whether the individual or the provider of services who furnished the services, or both, knew or could reasonably have been expected to know that the services were excluded from coverage (see §411.402);

(13) Any other issues having a present or potential effect on the amount of benefits to be paid under part A of Medicare, including a determination as to whether there has been an overpayment or underpayment of benefits paid under part A, and if so, the amount thereof; and

(14) Whether a waiver of adjustment or recovery under sections 1870 (b) and (c) of the Act is appropriate when an overpayment of hospital insurance benefits or supplementary medical insurance benefits (including a payment under section 1814(e) of the Act) has been made with respect to an individual.

(c) *Initial determination with respect to a provider of services.* An initial determination with respect to a provider of services shall be a determination made on the basis of a request for payment filed by the provider under part A of Medicare on behalf of an individual who was furnished items or services by the provider, but only if the determination involves the following:

(1) A finding by the intermediary that such items or services are not covered by reason of §411.15(g) or §411.15(k); and

(2) A finding by the intermediary that either such individual or such provider of services, or both, knew or could reasonably have been expected to know that such items or services were excluded from coverage under the program.

[55 FR 11020, Mar. 26, 1990]

§ 405.705 Actions which are not initial determinations.

An initial determination under Part A of Medicare does not include determinations relating to:

(a) The reasonable cost of items or services furnished under Part A of Medicare;

(b) Whether an institution or agency meets the conditions for participation in the program;

(c) Whether an individual is qualified for use of the expedited appeals process as provided in §405.718;

(d) An action regarding compromise of a claim arising under the Medicare program, or termination or suspension of collection action on such a claim under the Federal Claims Collection Act of 1966 (31 U.S.C. 3711). See 20 CFR 404.515 for overpayment claims against an individual, §405.376 for overpayment claims against a provider, physician or other supplier, and §408.110 for claims concerning unpaid Medicare premiums;

(e) The transfer or discharge of residents of skilled nursing facilities in accordance with §483.12 of this chapter; or

(f) The preadmission screening and annual resident review processes required by part 483 subparts C and E of this chapter.

[45 FR 73932, Nov. 7, 1980; 46 FR 24565, May 1, 1981, as amended at 52 FR 22454, June 12, 1987; 52 FR 48123, Dec. 18, 1987; 57 FR 56504, Nov. 30, 1992; 61 FR 63749, Dec. 2, 1996]

§ 405.706 Decisions of utilization review committees.

(a) *General rule.* A decision of a utilization review committee is a medical determination by a staff committee of the provider or a group similarly composed and does not constitute a determination by the Secretary within the meaning of section 1869 of the Act. The decision of a utilization review committee may be considered by CMS along with other pertinent medical evidence in determining whether or not an individual has the right to have payment made under Part A of title XVIII.

(b) *Applicability under the prospective payment system.* CMS may consider utilization review committee decisions related to inpatient hospital services paid for under the prospective payment system (see part 412 of this chapter) only as those decisions concern:

(1) The appropriateness of admissions resulting in payments under subparts D, E and G of part 412 of this chapter.

(2) The covered days of care involved in determinations of outlier payments under §412.80(a)(1)(i) of this chapter; and